

REMARKS**I. Status of the Claims**

With this amendment, claims 4 and 22-28 are pending in the present application and under examination. Claims 1-3, 5-21, and 29-32 are canceled. Claim 28 is being amended with this response.

II. Telephonic Interview

Applicants thank the Examiner for the helpful Telephonic interview on Wednesday September 5, 2007, where applicants and the Examiner discussed the pending obviousness-type double patenting rejections and the rejections of claim 28. Pursuant to those discussions, applicants have amended claim 28 to clarify that the purified polypeptide is immunogenic to accord with the support in the specification and the antecedent support in claim 4.

III. Claim of Priority

The Examiner has acknowledged the applicants claim of priority to U.S. Provisional Patent No. 60/103,749, filed 10/09/1998, 60/099,062, filed 09/02/1998, 60/098,994, filed 9/02/1998, 60/098,869, filed 7/31/1998, and 60/083,758, filed 5/01/1998. Please note that U.S. Provisional Patent No. 60/098,869, filed 7/31/1998, referred to by the Examiner appears to be 60/094,869, filed 7/31/1998. The present application also claims the benefit of the priority of U.S. Provisional Patent Nos. 60/103,794, filed 10/09/1998, 60/103,796, filed 10/09/1998, 60/121,528, filed 2/25/1999. The claim of priority was properly set forth in the declaration signed by the inventors submitted on 11/1/2000 and was set forth in the first paragraph of the specification as filed on 11/1/2000. A request for a corrected filing receipt is submitted herewith to correct the claim of priority on the filing receipt to reflect the claim of priority in the application data sheet and the first paragraph of the specification as submitted

IV. Requirement for Information Under 37 C.F.R. 1.105

Pursuant to the Examiner's request, the applicants provide the following list of applications of which they are aware and believe disclose at least a homolog of the protein designated TIGR-741 of which the presently pending claims are directed to fragments comprising 10 or more consecutive amino acids from one homolog of TIGR-741.

U.S. Ser. No. 11/395,121, U.S. Ser. No. 10/111,983, U.S. Ser. No. 10/915,740, U.S. Ser. No. 10/018,470, U.S. Ser. No. 10/982,703, U.S. Ser. No. 10/148,533, U.S. Ser. No. 10/181,600, U.S. Ser. No. 11/067,260, U.S. Ser. No. 10/488,786, U.S. Ser. No. 10/530,753, U.S. Ser. No. 10/526,113, U.S. Ser. No. 10/536,215.

The foregoing list is not a statement that the assignee intends to prosecute claims that overlap or are in anyway related to the presently pending claims, merely that these applications likely disclose the TIGR-741 protein in some form.

V. Specification

The Examiner has asserted that Figure 1 is missing in the set of drawings. Applicants are including with this response a Figure 1 to amend and add to the drawings for this patent application. Figure 1 was included in the priority applications that were incorporated by reference including, by way of example 60/121,518. Therefore addition of Figure 1 introduces no new subject matter as it was properly incorporated by reference.

The amendment to the specification submitted herewith addresses the Examiner's objection regarding figures with multiple panels and multiple pages.

The amendment to the specification submitted herewith addresses the Examiner's objection regarding the sequences depicted in Figures 19-23 and pages 69-71. A replacement sequence listing is being submitted with this response.

The amendment to the specification submitted herewith addresses the Examiner's objection regarding trademarks.

The amendment to the specification submitted herewith addresses the Examiner's objection regarding the ATCC address. One of skill in the art would have no difficulty in finding the ATCC without the address in the specification, so the address has been removed since the ATCC may move any number of times during the patent term, which could not be addressed through continued amendments to the specification.

The amendment to the specification submitted herewith addresses the Examiner's objection regarding embedded hyperlinks.

VI. Provisional Double Patenting Rejections

Applicants acknowledge the provisional non-statutory double patenting rejections cited by the Examiner. Applicants traverse the provisional rejections and their supporting remarks. Applicants wish to remind the Examiner of MPEP 804(I)(B)(1) which indicates that when a provisional non-statutory double patenting rejection is the only rejection remaining in the earlier filed of two pending applications, while the later filed is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier filed application to issue as a patent without a terminal disclaimer.

In this case, the instant patent application has an earlier filing date than any of the patent applications cited by the Examiner in the provisional non-statutory double patenting rejections and any of the additional applications cited in response to the Examiner's request for information and none of these later filed patent applications are presently in condition for allowance. Therefore since the applicants have amended claim 28 to address the pending rejections leaving no other grounds for rejection than the provisional double patenting rejections, applicants respectfully request that the Examiner withdraw the provisional double patenting rejections and allow the pending claims.

VII. Rejection under 35 U.S.C. 112, First Paragraph (New Matter)

Claim 28 is rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, in order to facilitate prosecution in this case, applicants have amended the claim to clarify that the *purified polypeptide* is immunogenic, without prejudice or disclaimer. Support for the amendment may be found in originally filed claims 16-18 which indicate that immunogenic polypeptide fragments such as claim 28 are part of the invention. Additional support may be found by way of example on page 6, lines 3-7, of the specification which indicates that the invention further provides fragments of the *N. meningitidis* amino acid sequences of which SEQ ID NO: 2536 is. This paragraph further indicates that such fragments may be 10 or more amino acids and that such fragments further comprise an epitope. One of skill in the art would recognize that a fragment with an epitope is immunogenic. Applicants thus respectfully request withdrawal of the rejection of claim 28 under 35 U.S.C. § 112, first paragraph as the rejection is moot.

VIII. Rejection under 35 U.S.C. 112, Second Paragraph

Claim 28 is rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, in order to facilitate prosecution in this case, applicants have amended the claim to indicate the antecedent support, without prejudice or disclaimer. Applicants thus respectfully request withdrawal of the rejection of claim 28 under 35 U.S.C. § 112, second paragraph as the rejection is moot.

IX. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **223002101200**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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